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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report of the United Nations High Commissioner for Human Rights on the situation of human rights in East Timor

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CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 3	3
II.	ACTIVITIES OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS	4 - 13	3
	A. Technical cooperation between the Office of the United Nations High Commissioner for Human Rights and the Government of Indonesia regarding the prosecution of human rights violations committed in East Timor in 1999	4 - 8	3
	B. Technical cooperation between the Office of the United Nations High Commissioner for Human Rights and the United Nations Transitional Administration in East Timor	9 - 13	4
III.	THE HUMAN RIGHTS SITUATION IN EAST TIMOR AND RELATED ACTIVITIES	14 - 87	5
	A. Status of investigations and prosecutions of serious crimes committed in East Timor in 1999	15 - 22	6
	B. Capacity-building	23 - 52	8
	C. The reception, truth and reconciliation process	53 - 59	15
	D. The protection of ethnic and religious minorities and other vulnerable groups	60 - 83	17
	E. Enforcement of law	84 - 87	22
IV.	RECOMMENDATIONS FOR ONGOING AND FUTURE KEY AREAS OF WORK TO PROMOTE AND PROTECT HUMAN RIGHTS IN EAST TIMOR	88 - 115	23

I. INTRODUCTION

1. At the fifty-seventh session of the Commission on Human Rights, the Chairperson of the Commission issued a statement on the situation of human rights in East Timor in which the United Nations High Commissioner for Human Rights was requested to submit an interim report to the General Assembly at its fifty-sixth session and to report to the Commission at its fifty-eighth session. The Economic and Social Council endorsed the statement of the Chairperson at its substantive session of 2001.

2. The High Commissioner submitted an interim report to the General Assembly at its fifty-sixth session (A/56/337). In this report, the High Commissioner noted, inter alia, that implementation of the programme of human rights technical cooperation between the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Transitional Administration in East Timor (UNTAET) was progressing well. The High Commissioner also noted that it was essential to continue to strengthen new and vulnerable institutions in East Timor. That would require the development of strong mechanisms for the protection of human rights, including rights based, inter alia, on provisions of the Constitution, legislation, government structures and procedures.

3. The present report is submitted pursuant to the request contained in the Chairperson's statement and provides information on the developments since the High Commissioner reported to the General Assembly at its fifty-sixth session.

II. ACTIVITIES OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

A. Technical cooperation between the Office of the United Nations High Commissioner for Human Rights and the Government of Indonesia regarding the prosecution of human rights violations committed in East Timor in 1999

4. As the High Commissioner has reported before, implementation of a project of technical cooperation between OHCHR and the Government of Indonesia, to include training for judges, prosecutors and defence counsellors, and ad hoc judges and ad hoc prosecutors of the Ad Hoc Human Rights Court, was to have commenced in mid-2001. Implementation of this project was initially put on hold by OHCHR pending revision of Presidential Decree No. 53 of 23 April 2001 establishing the Ad Hoc Human Rights Court to try the East Timorese cases arising from the violence that took place in 1999. The Presidential Decree provided that the Court had jurisdiction over only those cases arising from the violence that took place after the popular consultation held on 30 August 1999 in East Timor.

5. The original Presidential Decree was revised by Presidential Decree No. 96 of 1 August 2001, whereby the jurisdiction of the Court was revised to cover cases that occurred in the districts of Dili, Liquisa and Suai in April and September 1999. Accordingly, the project of technical cooperation remains on hold.

6. The limited jurisdiction conferred upon the Court does not address the actual situation as reported to various United Nations officials, independent experts and non-governmental organizations (NGOs) who investigated the 1999 violence. In particular, the limited jurisdiction contrasts with the situation reported by the United Nations International Commission of Inquiry on East Timor (ICIET) in its report dated 31 January 2000.[1] For instance, the Deputy Regional Commander of the United Nations Civilian Police in Los Palos district informed ICIET that he had recorded 14 murders and that, according to him, ex-militia personnel were aware of some 40 to 50 other murders that had been committed in 1999. ICIET was also informed about alleged murders in Bobanoro district in April 1999. These cases and many others similar reported to ICIET fall outside the jurisdiction of the Court.

7. In addition, the report of the Indonesian Commission of Investigation into Human Rights Violations in East Timor (KPP-HAM), also of 31 January 2000, recommended prosecutions of over 100 suspects for massacres and other serious human rights abuses across the territory of East Timor, including the alleged massacre of Bobonaro villagers in April 1999, and the alleged murder in Maliana district of at least two UNAMET staff and people seeking refuge in Maliana police station in September 1999. Geography or time did not limit the KPP-HAM recommendations. Again, the jurisdiction of the Court, as conferred on it by the revised Presidential Decree, would not allow for the prosecution of such allegations.

8. The High Commissioner recalls the conclusions and recommendations of the Committee against Torture of 22 November 2001 to the Government of Indonesia. The Committee recommended, inter alia, that the Government of Indonesia "ensure that the proposed Ad Hoc Human Rights Court for East Timor will have the capacity to consider the many human rights abuses which were alleged to have occurred there during the period between 1 January and 25 October 1999".[2]

B. Technical cooperation between the Office of the United Nations High Commissioner for Human Rights and the United Nations Transitional Administration in East Timor

9. The High Commissioner has reported earlier on the progress of implementation of the project of human rights technical cooperation between OHCHR and UNTAET to strengthen national infrastructure for the promotion and protection of human rights in East Timor. In May 2001, an OHCHR expert travelled to East Timor to provide human rights training on the methodology of monitoring, investigation and protection to East Timorese district human rights officer interns recruited by the Human Rights Unit of UNTAET. In June 2001, OHCHR, UNTAET, the East Timorese Police Services (ETPS) and the United Nations Civilian Police (CivPol) organized two training courses on human rights in law enforcement, one for the ETPS and the other for CivPol. Since this training, UNTAET, with the cooperation of UNICEF and the assistance of OHCHR, has produced pocket-sized cards for all police in East Timor, outlining rights of the accused on arrest, including the rights of juveniles, in Tetum, Portuguese, English and Bahasa Indonesia.

10. In November 2001, OHCHR, UNTAET and the International Bar Association (IBA) organized a human rights training programme for 25 East Timorese judges, prosecutors, public defenders and legal aid lawyers. The basis of the training was the draft OHCHR-IBA manual on human rights training for judges and lawyers. Topics included the independence of the judiciary, the right to a fair trial, human rights standards and applicable Indonesian law, juvenile justice, women and the administration of justice, and the development of a code of ethics. The training benefited from the participation of the Special Rapporteur on the independence of judges and lawyers, Dato Param Cumaraswamy. Follow-up training is currently being discussed with the participants and the East Timorese Jurists' Association and will focus on issues such as domestic violence, juvenile justice and the development of a code of ethics for the judiciary.

11. In November 2001, OHCHR and UNTAET provided assistance, through the recruitment of an expert on drafting constitutions, to the Constituent Assembly, in order to assist in ensuring that the East Timorese constitutional drafting process reflected international human rights norms. The consultant addressed a plenary session of the Constituent Assembly concerning the importance of public participation in the constitutional process and provided examples drawn from the South African experience of ways in which to popularize the Constitution. Written comments on the implications of the draft constitution on the realization of internationally recognized human rights were distributed to interested groups and parties.

12. Ongoing activities under the project of technical cooperation include the provision of legal advice and assistance to ensure that draft legislation is in accordance with international human rights standards. Advice has been provided on the conformity of various applicable Indonesian laws with international human rights law, such as the Indonesian Civil Code - Book One, which deals with issues relating to marriage and relationships within the marriage, as well as parental rights, and chapter XIV of the Indonesian Criminal Code, which refers to crimes against decency. In addition, assistance has been and is being provided for the establishment and development of the Commission on Reception, Truth and Reconciliation, including assistance on the draft regulation, both during the drafting and implementation stages, in raising the necessary funds, drafting an overall methodology for the Commission, important investigations and hearings, and conducting a training and initiation programme for Commissioners and staff. The final activity under the project of technical cooperation, the purchasing, translation (into Tetum and Bahasa Indonesia) and dissemination of international human rights educational and training materials, continues.

13. It is envisaged that implementation of this project will be completed in early 2002. Subsequently, evaluation of the project will be undertaken and there are plans for an extended programme of technical cooperation to commence as soon as possible between OHCHR and, initially, UNTAET and, thereafter, the UNTAET successor mission, subject in the latter case, to the approval of the East Timorese Government.

III. THE HUMAN RIGHTS SITUATION IN EAST TIMOR AND RELATED ACTIVITIES

14. The information upon which this section is based has been provided by UNTAET.

A. Status of investigations and prosecutions of serious crimes committed in East Timor in 1999

15. At the time of writing, the Prosecutor General in East Timor has issued 33 indictments,[3] of which 11 are for crimes against humanity. Of the total of 83 persons indicted for serious crimes, 38 are believed to be at large in Indonesia - 24 of them accused of murder or crimes against humanity. To date, 21 persons have been convicted in East Timor for serious crimes. One case was dismissed on jurisdictional grounds. Four of the convictions have been upheld on appeal, while in two other cases the charges were reduced from murder to manslaughter. Other appeals are pending.

16. The first trial of crimes against humanity began on 9 July 2001 before the Special Panel for Serious Crimes of the East Timorese Court. The "Los Palos" indictment filed in December 2000 comprises seven charges, including murder, torture, persecution and forced deportation, of crimes against humanity. The 10 East Timorese men on trial were alleged members or supporters of the *Tim Alfa* militia. An eleventh defendant, a member of the Indonesian Kopassus Special Forces, is still at large in Indonesia, despite an outstanding warrant for his arrest. One of the charges was for the murder of nine people: three nuns, three Catholic brothers, their driver, a journalist travelling with them and a young man. On 11 December 2001, the Special Panel convicted the 10 defendants present at the trial of committing crimes against humanity. All 10 defendants were given sentences ranging from 4 to 19 years for single acts. In addition, four were convicted of participation in multiple crimes and were, therefore, sentenced to 33 years and 4 months, the maximum sentence possible under the applicable Indonesian law. In handing down the verdict and sentencing, a Special Panel judge stated that the Court had established beyond doubt that there was in East Timor during 1999 "an extensive attack by the pro-autonomy armed groups supported by the Indonesian authorities targeting the civilian population". Though there has been reference to the involvement of the Indonesian authorities in the 1999 abuses in previous cases tried by the Special Panel, this had been included only within the "dicta" part of the judgement and not as an element of crimes against humanity. The Los Palos judgement was the first judgement pronounced within East Timor in which the support of the Indonesian authorities targeting the civilian population was established as an element of the commission of crimes against humanity.

17. On the one hand, the verdict can be seen as a step forward in East Timor's quest for justice. Concerns, however, have been raised that the right to a fair trial may have been jeopardized by the lack of parity of arms between the prosecution and defence. Specifically, the prosecution was composed of experienced international criminal lawyers from the Serious Crimes Unit. On the other hand, the drastically under-resourced and overstretched Public Defenders' Office provided defence lawyers. In this case, three international lawyers (later two) and three East Timorese lawyers defended the 10 accused, thereby denying the accused access to separate defence counsel, which would have avoided completely the potential for a conflict of interest. Moreover, the three East Timorese defence lawyers had had limited legal training in Indonesia and had been practising only since the establishment of the Public Defenders' Office in January 2000. There were additional problems of continuity of representation, with one

international lawyer leaving before the completion of the presentation of evidence owing to the expiration of his contract, one East Timorese lawyer taking vacation during the presentation of the evidence and four of the accused having their final statements read by a lawyer who had not represented them at trial.

18. With the departure and non-replacement of some international judges, only one special panel can currently be constituted, as each panel requires two international judges and one East Timorese judge. Accordingly, during the Los Palos case, no other trials of serious crimes could be heard, as only one special panel was able to sit at that time. The second crimes against humanity trial, the so-called "Lolotoe case", commenced on 8 February 2002. This case involves 27 counts of crimes against humanity, including imprisonment, torture, inhumane acts, persecution, three rapes and four murders. The alleged incidents took place between May and September 1999 in and around the Lolotoe area near the West Timor border in Bobonaro district. Two of the three accused are alleged to have been commanders of the *Kaer Metin Merah Putih* militia and the third was a former village chief. Two other accused, a lieutenant of the Indonesian Army and an Indonesian civil servant, were originally included in the indictment but are still at large in Indonesia. The trial will proceed against the first three men only. The Lolotoe case is one of the 10 priority cases investigated by the Serious Crimes Unit (SCU).

19. Investigations and prosecutions undertaken by the SCU have been hampered by a lack of human and financial resources. The recent restructuring of the SCU, as well as commitment for a continuation of the Unit, beyond independence, from within the assessed budget should begin to provide adequate resources to address this problem.

20. As stated in paragraph 15 above, almost half of those persons indicted by the East Timorese Prosecutor General for serious crimes committed in 1999, be they members of the Indonesian military or East Timorese militia, are currently on Indonesian territory. However, neither the prosecutors of the Serious Crimes Unit nor the Special Panel judges have the authority to compel those outside East Timorese territory to submit to its jurisdiction. Pursuant to the Memorandum of Understanding between the Republic of Indonesia and UNTAET of 6 April 2000 regarding cooperation in legal, judicial and human rights-related matters, repeated requests have been transmitted by UNTAET to the Indonesian authorities to question persons of interest, as well as to receive documentary evidence. Arrest warrants issued in East Timor have also been transmitted to the Indonesian authorities. To date, there has been no positive response by the Indonesian authorities to any of these requests. Furthermore, during a mid-November 2001 meeting between the newly appointed East Timorese Prosecutor General and the Indonesian Attorney-General, the Indonesian Attorney-General stated that the Memorandum of Understanding was not legally binding as it had not been ratified by the Indonesian Parliament. This position was reiterated during a meeting between the East Timorese General Prosecutor and the Indonesian Attorney-General in January 2002.

21. As far as UNTAET is aware, the first judgement which explicitly identified the role of the Indonesian authorities in the human rights abuses committed in East Timor during 1999 appears to be the default judgement pronounced on 4 October 2001 in the United States Federal Court in a civil lawsuit against General Johny Lumintang, who was, at the relevant time, the Vice Chief of Staff of the Indonesian Armed Forces and is currently Secretary-General of the

Ministry of Defence. The Federal Court judge stated that General Lumintang, "along with other high-ranking members of the Indonesian military, planned, ordered and instigated acts carried out by subordinates to terrorize and displace the East Timorese population and to destroy East Timor's infrastructure following the vote for independence". General Lumintang was not present at the court hearings. The six plaintiffs or their estates were granted significant punitive and compensatory damages under the Alien Tort Claims Act of 1789, which allows non-citizens to sue for acts committed outside the United States. While there may be difficulties in enforcing the judgement, NGOs have hailed it as an important step forward in seeking redress for the crimes committed in 1999.

22. The Human Rights Unit of UNTAET has continued to provide information on specific cases to both the SCU and CivPol to assist in their investigation and prosecution efforts. In addition, the Unit has facilitated meetings between communities and the SCU to discuss the judicial process, the return of the remains of 1999 victims to their families and current tensions between communities as a result of the lack of progress made by the formal judicial proceedings. A report on the human rights situation East Timor in 1999, district by district, is in the final stages of completion by UNTAET. In addition, data on human rights violations committed in 1999 are being entered by UNTAET into a human rights database which will be shared with the SCU to assist it in its investigations of the 1999 crimes.

B. Capacity-building

1. Access to justice

23. Efforts to establish an effective and accessible judicial system from scratch in East Timor pose a major human rights challenge. The shortage of qualified judicial and legal personnel persists. There are currently only 23 active East Timorese judges - including investigative judges and judges on the Court of Appeal and Serious Crimes Panels (one judge has been appointed Vice Minister of Justice and a second judge is overseas, studying). There are 11 East Timorese prosecutors. As noted in paragraph 17, the Public Defenders' Office is seriously overstretched, having only 11 East Timorese public defenders. Some of the judges, prosecutors and public defenders have been absent for months receiving training overseas.

24. Capability for trying suspects accused of serious crimes remains low because of the restricted number of experienced judges and public defenders, and support services for the courts remain limited. Courts and investigators are also hampered by the difficulty in obtaining translations into and from English, Portuguese, Tetum, Bahasa Indonesia and the many local dialects.

25. UNTAET regulations[4] call for the establishment of four district courts, located in Dili, Suai, Baucau and Oecussi, and one court of appeal, located in Dili. At present, however, there is no court in Suai, while the functioning of Baucau and Oecussi courts is limited, with some cases being transferred to Dili District Court, which has jurisdiction throughout the entire territory of East Timor for a transitional period.[5]

26. While Baucau District Court appears to be adequately staffed,[6] judges and prosecutors have frequently been absent, leading to the defendant's transfer to Dili or to their release. Absence of the judges and prosecutors has been attributed to, inter alia, both the lack of resources and security concerns, although some magistrates have indicated that they have grown accustomed to the pressures they are under and therefore such circumstances do not affect their judgement. In addition, frequent training overseas has contributed to the absence of judges from the court.

27. The Oecussi District Court was established in late June 2000. To date, aside from approximately 60 interlocutory proceedings heard by the former investigating judge, the court has not heard any cases. It currently still lacks several magistrates and court staff, as well as physical resources to enable it to function fully.[7]

28. In Suai district, judges and prosecutors have been appointed but, as a result of the lack of accommodation for judges and the absence of a court building, those judges and prosecutors have been working from Dili. The courthouse is currently being restored and is likely to be completed by the end of March 2002. It is anticipated that the court will be in a position to sit in Suai once the courthouse is furnished.

29. Local systems of dispute resolution, including informal justice mechanisms, have always played an important role in East Timor, particularly in the context of the vacuum of law and order as a result of generations of oppression and colonization. These mechanisms vary from one area to the next and many were modified by the Portuguese and Indonesian authorities. As East Timor seeks to re-establish the rule of law, an important question arises as to what role such systems should continue to play and what relationship should exist between the informal justice mechanism and the formal justice system. One difficulty thus far has been the lack of any clear assessment or survey of the informal justice mechanisms and how they operate. The need for such an assessment or survey was highlighted during a workshop organized by the National Security Adviser on the relationship between informal justice mechanisms and the formal justice system, and how this relationship should be reflected in the Constitution. It was noted thereat that research on these issues should be undertaken on a long-term basis by the East Timorese themselves in order to identify not only what mechanisms exist but also how they can positively contribute to conflict resolution in East Timor in the future.

30. Many informal justice mechanisms, however, tend to be discriminatory and thus inadequate for dealing with, inter alia, cases of violence against women or children or offences involving political figures. UNTAET is in the process of developing guidelines for the police, the prosecutors and local leaders aimed at clarifying which crimes should not be referred to such informal justice mechanisms to ensure the equal protection of all, without discrimination, under the law in East Timor. A human rights framework within which informal justice mechanisms should operate, including with respect to due process principles, also needs to be developed with local leaders, who traditionally chair dispute resolution meetings. This is essential as informal justice mechanisms will continue to operate in East Timor alongside the formal justice system. Such guidelines can also be used by the Commission on Reception, Truth and Reconciliation, which will rely on informal justice mechanisms when facilitating community reconciliation agreements between the communities and the perpetrators of less serious crimes.

31. There are currently three prisons in East Timor, in Dili, Baucau and Ermera districts. Becora prison in Dili currently has 209 inmates, the large majority of whom are pre-trial detainees. Baucau prison currently has 12 inmates. The planned increase of its capacity to 30 inmates has been hampered by lack of space and lack of capacity to provide food for more than 12 prisoners. However, the increase in capacity is likely to occur in the financial year 2002-2003, with an envisaged increase to a maximum capacity of 50 inmates thereafter. Gleno prison in Ermera district currently houses 70 inmates, including some female prisoners and pre-trial detainees held together in a small cell.

32. Delays in the justice system leading to lengthy periods of pre-trial detention[9] have particularly detrimental effects on those inmates already vulnerable at the outset of their incarceration, such as the mentally ill, juveniles and women. UNTAET has, however, made major efforts in reducing the period of warrants which are overdue. For instance, the ETPS and the prison director for all three prisons have alerted the courts to detention warrants which are about to expire. Unless circumstances have significantly changed since the time of the original detention, investigating judges will renew the period of the detention warrant.

33. At least five deaths in custody were reported to have taken place in 2000-2001. Some cases appear to be the result of negligent or late medical response, such as an inmate who died in Gleno prison on 30 July 2001. In response to another death in custody in the same prison in November 2000, an internal board of inquiry recommended in its 2001 report that medical training of prison staff should be addressed as a matter of priority. As a result, nurses have been assigned to Becora and Gleno prisons, some of whom have attended human rights training given by UNTAET. Investigation into deaths in custody is, however, severely hampered by the lack of adequate forensic resources in East Timor. UNTAET has experienced great difficulty in recruiting a permanent forensic pathologist. This results in a denial of the right to an effective remedy for the relatives of the victim.

34. From September until December 2001, UNTAET conducted human rights training for about 70 prison officers in Gleno and Becora prisons, based upon a training manual for prison staff developed by the International Centre for Prison Studies (London) on behalf of OHCHR and adapted to the needs of East Timorese prison personnel. The training highlighted United Nations standards for the treatment of detainees and prisoners, as well as the newly promulgated UNTAET Regulation 2001/23 (as amended by 2001/27) on the establishment of a prison service in East Timor. Emphasis was laid upon imprisonment as part of the rehabilitation process, not only as a punishment. Owing to the success of this programme and its appreciation by prison authorities, it was extended to Baucau prison where UNTAET, with the assistance of ETPS human rights focal points, trained 16 Timorese prison guards in November-December 2001.

2. The legislative framework

35. In addition to the technical assistance provided by OHCHR to UNTAET to ensure that draft legislation is in accordance with international human rights standards (see paragraph12 above), UNTAET has continued to review draft legislation for consistency with international human rights law and has forwarded comments to the Cabinet and the National Council on, inter alia, the Electoral Offences Law, the Code of Military Discipline, the Regulation on the

Establishment of Penal Institutions, amendments to the regulations on the Public Prosecution Service, the Transitional Judicial Service Commission, the organization of the courts system, draft regulations establishing the Telecommunications Services and the Legal Aid Service. The Legislation Committee of the Cabinet continued to operate until the dissolution of that body before the elections for the Constituent Assembly at the end of August 2001. The new Council of Ministers has not established a similar legislative review body and the process for ensuring compliance of proposed laws with international human rights law is less clear at present.

36. Prior to the Constituent Assembly elections, a number of proposed amendments to the laws regulating the operation of the justice system had implications for fundamental human rights principles, in particular the independence of the judiciary, and were the subject of intense discussion and comments. UNTAET, together with East Timorese human rights NGOs, made a series of recommendations aimed at ensuring consistency with international human rights law. As a result, the Transitional Administrator adopted the proposed laws, taking into account the recommended changes.

37. In September 2001, the Constituent Assembly, through its Internal Rules and Procedures,[9] delegated its legislative drafting and adopting powers to a Specialized Legislative Committee within the Assembly, with the budget remaining as the only piece of legislation needing to be approved by the plenary Assembly. Concern has been expressed that the extent of such delegation of powers is in violation of the UNTAET regulation establishing the Constituent Assembly. Apart from the issue of the legitimacy of such powers, the current practice of the Committee not to report back to the plenary affects the transparency of and political participation in lawmaking.

38. UNTAET is working with other partners, such as the Ministry for Foreign Affairs, other government departments, and agencies such as UNICEF and UNHCR, to assist the East Timorese Government with the ratification of international human rights instruments and other instruments with human rights implications upon independence. The aim is not only to encourage speedy ratification of the instruments but also to provide technical support to the Government, in accordance with guidance provided by OHCHR, in implementing the treaties and fulfilling its obligations.

3. Elections and the constitutional process

39. The 30 August 2001 Constituent Assembly election, in which approximately 400,000 people voted, was largely conducted in a spirit of tolerance, respect for human rights and freedom from intimidation. The election was fully endorsed by the Board of Independent Electoral Commissioners, who noted in their final statement:

> "The campaign proceeded in a notably peaceful way. While there were some complaints raised regarding some minor infractions, all the evidence available to the Board suggests that the campaign was the most peaceful at any election organized, supervised and controlled, or verified by the United Nations and, in general, more resembled an election in a stable established democracy than a campaign in a country hosting a peacekeeping operation."[10]

40. Security groups, whose presence on election day had been anticipated, appear to have been largely absent from the polling centres. However, in at least one district, security groups were present at a polling centre, where they were provided with ID cards and some members were observed inside the centre. It is widely accepted that the deployment of members of the ETPS on election day contributed to both increased public confidence in the police service and a low number of security incidents, so that people felt free to exercise their right to vote without intimidation.

41. A relatively small number of potential voters experienced difficulties in being able to cast their votes. They included a number of hospital patients and prisoners, some people living in remote areas and individuals who were required to work outside of their districts and therefore did not register or were not on the relevant voter roll.

42. The Election Offences Regulation developed by UNTAET provided for all electoral offences to be dealt with by the police as ordinary crimes. This approach could have had the effect of blurring the political nature of some offences and, together with the lack of a uniform nationwide coordination mechanism for dealing with electoral complaints, may have hampered the optimum receipt, handling and recording of information relating to electoral offences. During the campaigning period there were some reports of threats made by different parties in Aileu, Ainaro, Bobonaro, Liquica, Ermera and Suai districts. Also, three assaults, which appeared to be linked to the elections, were reported in Bobonaro, Suai and Ermera, although these do not appear to have been dealt with as electoral offences.

43. The Board of Independent Electoral Commissioners received a number of complaints relating to campaign infringements, all of them minor in character, which were investigated by CivPol as possible minor infringements of the Electoral Offences Regulation. Most of these allegations were found to be unsubstantiated after investigation, and the reports of those investigations were forwarded to the Board of Independent Electoral Commissioners. Only one of the cases was substantiated, a case of coercion by a party member in Suai, and the alleged offender was duly charged under the law.

44. Following the election of the Constituent Assembly, the Assembly began the task of drafting and adopting a Constitution for East Timor. The recommended timeframe for this process was 90 days from the swearing in of the Assembly's members on 15 September 2001, i.e. until 15 December 2001. The Assembly has faced enormous challenges in seeking to draft a Constitution in a period of 90 days and, accordingly, this period has been extended. It is now envisaged that the Constitution will be adopted by 16 March 2002.

45. There has been a clear commitment to enshrining human rights principles in the ongoing process to adopt a constitution for East Timor. In the work of the constitutional commissions mandated to conduct consultations throughout East Timor, the population repeatedly affirmed support for human rights. When the Constituent Assembly began sitting on 15 September 2001, each of its members swore an oath to uphold human rights. Similarly, when the Assembly decided on its methodology and the division of work to be handled by four thematic committees, human rights was given a primary place in being the subject matter of Thematic Committee One of the Assembly. Although the drafting process is yet to be completed, it is clear that the new Constitution will place an obligation on the new East Timorese Government to protect and

promote a wide range of internationally recognized human rights - civil and political rights, such as the right to a fair trial, the right to life, liberty and security, the right to vote and the right to freedom of association and assembly, as well as a range of economic and social rights, such as the right to education, the right to health and the right to housing.

46. The Assembly has made progress in drafting the Constitution, and there is much to commend, including the primacy given in the draft text to the protection of human rights and the promotion of women's status in society, both as a specific objective of the State, and through the explicit incorporation in the draft text of a number of internationally recognized rights. Concerns, nonetheless, have been expressed about certain aspects of the current process. First, in emphasizing the "representative democratic" model of government, the work of the Assembly itself seems to have minimized the right of individuals in East Timor to participate in political life by contributing to the political debate surrounding the Constitution itself. Although some public consultation was incorporated in its methodology, the consultation was time-limited and not widespread. For instance, though each of the thematic committees of the Assembly held public hearings, these were held over a period of only one to three days, at short notice and involved only a small number of invited individuals and groups. Accordingly, there is a popular perception that, to a large extent, the drafting process has focused on the prepared drafts of political parties, rather than incorporating comments or suggestions from ongoing consultations or the public hearings. As a result, there appears to be a limited sense of ownership of the process amongst civil society and already a questioning of the responsiveness of the Assembly to its constituents. The international consultant recruited by OHCHR to provide technical assistance to the constitutional drafting process also indicated that there were serious concerns regarding the extent to which the Assembly members were receptive to the submissions of those outside the political party structures.

47. The freedom to participate fully in political life has further been hampered by a serious lack of information concerning Assembly proceedings. Initially, the secretariat of the Assembly lacked resources to ensure adequate dissemination of information. In addition, documents being debated by the Assembly are considered to be "internal" until they are officially approved by the plenary. This has resulted in the draft Constitution being made available to civil society and UNTAET, inter alia, at a very late stage of the proceedings, thereby restricting the ability of individuals and groups to provide commentary and analysis and make proposals to the Assembly. While members of the Assembly have repeatedly affirmed the value of public opinions and the need to incorporate them into the constitutional drafting process, it seems that little has actually been done to support a truly consultative process.

48. In addition to procedural matters, there are also substantive issues of concern. As at the time of writing, a number of human rights norms recognized by the international community do not appear in the draft constitution. Many of these omitted rights have a particular impact on women, such as the right of equal remuneration for work of equal value, and the right of non-discrimination on the basis of parental status and pregnancy. Furthermore, the Constituent Assembly has paid less attention to economic, social and cultural rights than to civil and political rights in both their debates and the text of the draft constitution. There is, for instance, no generally recognized right to an adequate standard of living, although there is recognition of a right to housing, at a time when many aspects of an adequate standard of living - in terms of

adequate food, clothing, water and electricity – are not realized by many East Timorese. Furthermore, as regards the right to education, the draft constitution lacks an absolute guarantee in relation to the right to free primary education. The marginalization of economic and social rights has been found in many contexts to have a particularly harsh impact on women and children.

4. Civil society and non governmental organizations

49. With support from OHCHR, various materials for the promotion of human rights have been produced and distributed by UNTAET. In August 2001, T-shirts with a condensed version of the Universal Declaration of Human Rights in Tetum were designed and have been widely distributed to human rights organizations in Dili and the districts. UNTAET has distributed human rights material, including the major international human rights conventions, in Bahasa Indonesia to a wide range of organizations, including NGOs, legal aid organizations, Dili District Court, the Constituent Assembly, and the Police Academy.

50. As part of ongoing efforts to build the capacity of East Timorese human rights professionals, in November 2001, UNTAET conducted an evaluation with human rights educators from each of East Timor's districts who have been conducting training since they attended the UNTAET training of trainers in April 2001. The aim of the evaluation was to discuss future support and needs for the trainers in 2002. The evaluation also identified some of the major human rights issues of concern to communities, such as domestic violence and land rights. The same month, a second training for 35 human rights educators from the districts covered an introduction to human rights, women's rights and children's rights, as well as popular education methodologies, such as drama, for teaching human rights.

51. There are currently 10 East Timorese District Human Rights Officer interns working with the UNTAET Human Rights Unit, all of whom are taking part in an ongoing human rights training programme conducted by the Unit. Training sessions, including practical training, have been held on such topics as returnee monitoring, monitoring the human rights of prisoners, women's rights, children's rights and child abuse, criminal procedures and media relations. Further training on reporting and judicial monitoring is planned in the near future. In three districts (Manufahi, Liquica and Ainaro), as result of the downsizing of UNTAET, East Timorese District Human Rights Officers are the only representatives of the Unit, and in these districts, the East Timorese District Human Rights Officer interns are carrying out all functions required of the Unit's international district human rights officers, including monitoring, intervention and human rights promotional work. In addition there are two East Timorese Human Rights Training Officers and one National Human Rights Monitoring Officer at the Human Rights Unit headquarters.

52. UNTAET continues to provide logistical, financial and substantive support to local human rights groups in order to ensure a human rights presence after it leaves. Groups which have been established with the major assistance of UNTAET include the Human Rights Nucleus and independent team of human rights teachers in Aileu district and the Maliana Forum in Bobonaro district. In these two districts, there are now human rights resource centres providing a base and support for the activities of human rights groups. In other districts UNTAET has

assisted new human rights groups, for instance, in Ermera district, UNTAET has provided support to an NGO assisting families of disappeared persons, while in Liquica district, UNTAET is working closely with a widows' support group. In Oecussi district, UNTAET has assisted with the creation of a new women's organization, Centro Feto Oecusse Enclave, which will campaign against domestic violence and provide victim support services, including legal aid and the establishment of a women's refuge.

C. The reception, truth and reconciliation process

53. The UNTAET Regulation on the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor[11] was promulgated by the Transitional Administrator on 13 July 2001. The Regulation outlines the three main objectives of the Commission: first, to inquire into and establish the truth about human rights violations committed in East Timor between April 1974 and October 1999; second, to support reintegration of those who have committed minor criminal offences or harmful acts in the past, through a community-based reconciliation process; and third, to submit a report to the Government on the Commission's findings and make recommendations as to how to prevent future recurrences of human rights violations.

54. Five to seven National Commissioners responsible for the overall policy and operation of the Commission will head up the Commission. Between 25 and 30 Regional Commissioners will support them. The Commission will also have East Timorese staff, who will be supported by a small number of international technical experts. Current staffing estimates are for 190 to 200 regional personnel (33 persons in each of six proposed regions) and 50 to 60 national staff. The enabling legislation (UNTAET/REG/2001/10) specifies that the Commission shall operate for a period of 24 months, beginning two months from the date of appointment of the Commissioners. This period may be extended by up to six months at the discretion of the Transitional Administrator.

55. In addition to the assistance provided by OHCHR to UNTAET to support the establishment of the Commission, in August 2001, the UNTAET Human Rights Unit, in cooperation with the Steering Committee of the Commission, set up an Interim Office of the Commission in Dili. The Interim Office has been tasked with carrying out a wide range of preparatory activities for the establishment of the Commission, which - subject to adequate funding - is scheduled to be operational by early 2002. Among its key activities, the Interim Office has disseminated public information materials throughout East Timor explaining the objectives and structure of the Commission; mobilized initial donor funding for the Commission; prepared the location and staffing of the Commission's offices that will be set up once the National Commissioners are in place, and established and supported the Selection Panel responsible for the selection of Commissioners. Outreach activities have also been a priority: the Interim Office liaises closely with the East Timorese political and religious leadership, with NGOs, community groups and other organizations. There have been widespread public expressions of support for the Commission, including recent statements from the Chief Minister, the Minister for Foreign Affairs and the Minister of Justice.

56. Developing relations with East Timorese pro-autonomy groups currently located in West Timor is vital to the success of the Commission, particularly in relation to facilitating an effective community-based reconciliation process. A high-level delegation comprising staff from the Interim Office and members of the Steering Committee held two meetings with pro-autonomy groups, including *Unidade Timor Asuwain* (Union of Timorese Warriors) (UNTAS) in West Timor during August and September 2001, to inform them about the plans for the Commission. In general, the pro-autonomy participants expressed support for reconciliation, and particularly applauded the fact that the Commission's mandate will cover the period 1974-1999. However, concerns were raised that the UNTAET Regulation had already been promulgated without their input and that it was, therefore, being "imposed" upon them.

57. At a second meeting, UNTAS was invited to nominate a representative to sit on the panel for the selection of Commissioners established in accordance with section 4 of Regulation 2001/10. The task of the selection panel was to call for nominations for both national and regional commissioners, and to select the seven national commissioners. At the first meeting of the selection panel, on 20 September 2001,in which members of the four political parties that had existed prior to 1975, and representatives of youth, women, the Church, local human rights NGOs, victims' associations, the Unit and the Office of the Special Representative of the Secretary-General participated, UNTAS declined to nominate a representative.

58. Assisted by UNTAET, members of the Panel thereafter visited all 13 districts in East Timor during October 2001 as part of a wide process of consultation about who should serve as Commissioners. The public expressed a high level of interest and their recommendations and nominations for national and regional commissioners were received by the panel during these visits. The panel also visited West Timor in October 2001 to seek the views of pro-autonomy groups on the Commissioners. This visit resulted in some nominations being proposed by these groups. By the final deadline of 19 November 2001, a total of 95 nominations for seven national commissioners, and 219 nominations for 25 to 30 regional commissioners had been submitted by formal organizations or community groups.

59. On 21 January 2002, the seven National Commissioners were sworn in, in the presence of the Transitional Administrator. The High Commissioner delivered a video statement at the inauguration ceremony, in which she said:

> "the Commission begins, with great hope and promise, its tasks to achieve the twin goals of accountability based on truth, and healing through reconciliation. To achieve true healing will be difficult. First, it will require strength and openness from victims who will need to provide often distressing accounts of traumas that they have experienced. Secondly, and just as important, it will require those who caused trauma to publicly acknowledge the part they played and to accept responsibility for the effects of their actions. As the people of East Timor have recognized, it is only through justice and reconciliation that durable peace and stability can be achieved. The formal justice system will continue to hold to account those who committed serious crimes. The Commission will enhance this process by encouraging community solutions for people involved in

less serious crimes: it will help reunite local communities by giving them an opportunity for reconciliation in an environment conducive to healing. It is essential, therefore, that the East Timorese people step forward and begin this important journey together. Upon a true and complete record of East Timor's traumatic past, the new life of East Timor can be built."

D. The protection of ethnic and religious minorities and other vulnerable groups

1. The protection of ethnic and religious minorities

60. The position of religious and ethnic minorities remains a matter of concern. Though the draft constitution contains a prohibition on religious discrimination, it provides no special protection for religious or linguistic minorities. In addition to the treatment of minorities who are citizens of East Timor, there is also the question of what protection the State of East Timor offers to non-citizens. The focus of the Constituent Assembly seems to have been primarily on defining the relationship between the State of East Timor and its citizens.

61. UNTAET has made major efforts to address the concerns of the communities living in and around the Dili Mosque in Kampung Alor, which, since September 1999, has been occupied by Indonesian Muslims who sought refuge there from the post-consultation violence. Tensions between the local (East Timorese) community and Indonesian Muslims in Dili continued throughout the year. In September 2001, the Dili District Administration, with the assistance of the Human Rights Unit, organized a public hearing with 23 individuals representing the local communities, government departments and United Nations agencies. Discussions focused on four topics: peace and security; citizenship and residence; housing and property; and education. As a result of the hearings, the urgent need to move the Indonesian Muslims out of the mosque was recognized and six practical recommendations were made, such as the securing of temporary shelter for the residents of the mosque while public housing is being built for them, and the establishment of a public school in the area. Immigration and citizenship issues are to be resolved by the Constituent Assembly. The recommendations are to be presented to the Council of Ministers to seek their support. In December 2001 the rebuilt Baucau Mosque, which had been burnt down during disturbances in Baucau in March 2001, was inaugurated.

2. Human rights violations against women; women's rights as human rights

62. The legal regime governing elections to the Constituent Assembly encouraged the full involvement of men and women in public life. Women's groups organized a campaign to support the election of a maximum number of women candidates, with the result that 23 women were elected to the 88-member Assembly.

63. Though it is positive that the Assembly has recognized the equality of men and women in all spheres of life, and is considering casting an obligation on the State to advance the position of women in political life, certain rights such as the right of equal remuneration for work of equal

value, and the right of non-discrimination on the basis of parental status and pregnancy, have not as yet been recognized in the draft constitution. Women's groups in East Timor have, therefore, been active in putting forward draft articles on the protection of women's rights, to counter resistance to recognizing the need to take into account gendered perspectives on human rights.

64. The issue of domestic violence continues to be a major obstacle to East Timorese women's enjoyment of their human rights. The laws addressing this crime are inadequate, in that the applicable Indonesian Penal Code provides only limited protection against domestic violence against women as it criminalizes only violence leading to the most severe physical injuries. As such it does not address the reality of violence against women. However, to a large extent, it is the reluctance of the law enforcement agencies to deal with such cases that has proved the greatest problem. The majority of reported cases, including cases of severe physical violence and sexual violence, such as rape, have been referred by CivPol and ETPS and prosecutors to informal justice mechanisms, which are often discriminatory and provide little redress for the victim. For instance, they frequently resolve such cases by imposing the nominal payment to the victim's family of a small sum of money or a goat. In many of these cases, the victim is placed in an impossible situation of isolation, where protection against the perpetrator is not available and where she has little choice but to drop the complaint or refrain from making a complaint.

65. The handling by the judiciary of the rare cases that do come to court has highlighted that equality before the law is still far from being the reality for the women of East Timor. UNTAET has closely monitored the proceedings of several domestic violence cases and reports that, in one well-known case of a East Timorese surgeon accused of assaulting his wife on two separate occasions, it appeared that judges gave more weight to the position in society of the accused than to the victim's safety.[12]

66. East Timorese women's groups have worked hard to assist women victims of such violence by providing them with access to the law, shelter and counselling. In early November 2001, the East Timorese women rights NGO Fokupers hosted a round table on domestic violence that was attended by experts from the region, East Timorese government officials, ETPS, CivPol, members of the Constituent Assembly and NGO representatives. Participants called for specific legislation on domestic violence to respond to the current inadequate legal framework. As a result of the workshop, two groups were formed, in both of which the UNTAET Human Rights Unit participates. One group is looking at education campaigns on domestic violence as a crime. The working group is trying to ensure a coordinated approach on domestic violence from various actors, such as NGOs, the government agencies working on this issue, including the office of the Special Adviser of the Chief Minister on the Promotion of Equality, CivPol, the United Nations Population Fund (UNFPA) and the Human Rights Unit. The other working group is comprised of a small group of jurists from the NGOs and some judges who are in the process of drafting a law on domestic violence in the context of East Timor. The need for greater public awareness that domestic violence constitutes a crime was also highlighted at the round table.

67. At the request of East Timorese authorities and communities, UNTAET launched a series of training workshops on the issue of domestic violence in selected pilot areas in Baucau and Manatuto district. Women's organizations, human rights organizations and ETPS made

presentations at the workshops. The training was targeted at community members who have a leading role in implementing traditional dispute resolution mechanisms. The workshops were aimed at developing an understanding of the extent of the problem of domestic violence and of its criminal nature and to propose solutions within the local community.

68. The establishment of a Vulnerable Person's Unit within CivPol has been a positive step towards addressing the specific difficulties of investigating and prosecuting gender-based violence and violence against children. This mechanism has, however, only partially operated owing to the lack of expertise and clear operating procedures. In addition, UNTAET and the Second Transitional Government have launched a major public information campaign, including press conferences by senior government and United Nations officials and by regular programmes on this issue on television and radio.

69. The East Timorese judiciary has been unable to address civil matters as it is struggling even to deal with criminal law matters. This has serious implications for women's human rights. The applicable civil law is problematic in human rights terms and needs to be reformed, and the absence of any formal jurisdiction in which civil disputes can be resolved, particularly pertaining to marriage, divorce and maintenance, has left East Timorese women too often vulnerable and without remedies. In many cases, women who have been promised marriage and have given birth to a child in these relationships find themselves abandoned and having to care for the child alone, with no assistance from the father of the child. Women imprisoned in abusive marriages have been unable to get a divorce, with severe implications for their status and their ability to escape the abuse. Should they decide to leave the home as a result of the abuse they are also forced to leave behind their children and all their property. In other cases, young women have been forced to marry against their will in clear violation of their rights, but have no recourse through the law.

3. Children

70. UNTAET has worked systematically to ensure that the rights of children are integrated into laws adopted, in particular the Labour Code and the Regulations establishing the East Timor Defence Force, and the prison system. Of particular note is the fact that, as a result of this work, the minimum age for recruitment to the East Timor Defence Force is 18 years and the use of solitary confinement is prohibited as a form of punishment. In addition, UNTAET has ensured that the provisions of the Labour Code on child labour and light employment for children were substantively strengthened. The draft constitution recognizes childrens' rights consistent with international human rights standards.

71. The UNTAET Human Rights Unit hosts a Juveniles in Detention Working Group, comprised of the Department of Social Services, UNICEF, the mental health NGO, PRADET (see paragraph 83), prison authorities and the Public Defenders Office, which is developing guidelines for the release of juvenile prisoners aimed at improving their reintegration into their family and the community. In this regard, UNTAET is organizing a workshop in 2002 on juvenile justice, together with key partners, including the Departments of Social Services, Legal Affairs and Judicial Affairs, and UNICEF, to identify the way forward for specific legislation in this important and complex area as at the present time there are only temporary provisions

dealing with juvenile justice in the Rules of Criminal Procedure adopted by UNTAET.[13] The workshop will not only address the criminal procedures for dealing with children who are accused or convicted of crimes, but will also look at alternatives to detention and diversion programmes away from the formal criminal process.

72. In the context of its monitoring work, UNTAET has been informed of a number of cases of child abuse. As a result of concerns that the existing mechanisms established to investigate such crimes are inadequate, the Human Rights Unit has drafted, in consultation with key partners, including CivPol, the Serious Crimes Unit and UNICEF, provisional guidelines for the investigation of child abuse cases. The Unit is currently working with the Vulnerable Persons Unit to strengthen its capacity to deal appropriately with such cases and to ensure that future investigations into such cases take into consideration at all times the best interest of the child.

4. East Timorese returnees from West Timor

73. Up to 31 December 2001, UNHCR reports that 192,592 refugees have returned from West Timor to East Timor since October 1999. An estimated 60,000 refugees remain in the West Timor camps. Although returns initially increased following the peaceful election on 30 August 2001, they slowed down again in the following months (in November 2001, 1,703 persons returned; in December 2001, 2,055 persons returned). Misinformation on the situation in East Timor following return and intimidation in West Timor, together with economic and financial concerns, remain key factors for continuing non-return.

74. Notwithstanding the return of a number of children and their reunification with family in East Timor, a significant number of East Timorese children who fled to West Timor in 1999 remain missing and separated from their families. NGOs report that approximately 1,000 remain in West Timor and that a minority are scattered throughout the Indonesian archipelago, some allegedly taken to orphanages, church or private facilities.

75. The Government of Indonesia ceased providing food aid and distributing money on 31 December 2001. The East Timorese refugees will now be looked after solely by the few local and international NGOs operating in West Timor. (The United Nations has yet to return to West Timor following the murder of three UNHCR staff members in Atambua, West Timor, on 6 September 2000.) It remains to be seen whether the cessation of Indonesian assistance will contribute to increased returns to East Timor.

76. The Government of Indonesia has not yet announced the official results of the registration exercise undertaken on 6 and 7 June 2001. The numbers of those who have returned since the registration have far exceeded the numbers who registered to do so according to the unofficial results. Resettlement activities by the Government of Indonesia have yet to commence.

77. The overwhelming majority of returnees continue to be accepted back into their communities and, overall, the number of incidents of assault against returnees remains low. Attacks against returnees increased, however, during the latter months of 2001, corresponding to an increase in returnees. Assaults and intimidation tend to be more prevalent in those districts

where communities are demanding justice for human rights violations committed during 1999, including Oecussi, Bobonaro and Liquisa. Individuals suspected of involvement with pro-autonomy militia or political groups, particularly those who are perceived to have "escaped" justice, continue to risk harassment and at times are subjected to assaults, threats and intimidation. Returnees who have been rejected by their communities, yet who are not under investigation, have availed themselves of the protection provided by district safe houses.

78. Some cases of assault against returnees have resulted in prosecution, such as the case in August 2001 in which two men, a village chief and the head of the village security group, were sentenced to 18 months' imprisonment for their involvement in the detention and assault of returnees to Liquisa district in April 2000. In many other cases, however, there has been no prosecution as the majority of complainants fear further reprisals if prosecution takes place. In other cases, assaults against returnees have been investigated but traditional resolution has been recommended by CivPol, ETPS or the Prosecutor's Office, in circumstances that call into question the consent of the victim to submit freely to such a mechanism.

79. Refugee screening by unauthorized individuals has continued, although it appears to have decreased significantly since the beginning of 2001. Returnees in some districts have reported to UNTAET that they have been compelled to sign sometimes inaccurate statements regarding their alleged participation in activities in 1999, prepared by village chiefs and/or former National Council of Timorese Resistance (CNRT) security staff, as they saw this as a means of facilitating their reintegration into the community. Individuals alleged to have been involved with militia groups and/or in minor crimes during 1999 are frequently required to participate in a local ceremony to resolve the complaint against these individuals. There are instances, however, in which such ceremonies do not guarantee the rights of the accused and, in such cases, the individuals have declined to return to their village fearing that they will not receive a fair hearing.

80. Reconciliation efforts by the East Timorese leadership have facilitated the return of some senior East Timorese militia leaders, such as Nemesio Lopes de Carvalho, Deputy Commander of the *Mahidi* militia, which was active in Ainaro and Suai Districts in 1999. On 17 October 2001, after a reconciliation ceremony at the border, he was arrested on suspicion of crimes against humanity and murder, and taken to Dili. After a court appearance before an investigating judge of Dili District Court, he was conditionally released. He returned to his village, where he participated in a meeting hosted by the village chief in October 2001, but was reportedly discouraged by the police from attending another larger reconciliation meeting organized by youth groups and human rights NGOs in November 2001. De Carvalho is currently living in his village of origin and must report regularly to CivPol.

81. Local communities have expressed concerns about the additional burden returnees place upon them. Returnees coming back from two years in camps are a highly vulnerable, often sick and malnourished group, a burden on communities who already have their own shelter and food concerns.

82. UNTAET has played a major role in the reception and reintegration of returnees. Advance notification procedures have drastically improved over the reporting period and

UNTAET has cooperated closely with UNHCR, the International Organization for Migration (IOM), CivPol and ETPS within the framework of the District Returns Committees to ensure that host communities are prepared to receive returnees. UNTAET visits the relevant local authorities and communities to assess whether or not the community will oppose an imminent return. If problems arise despite these preparatory efforts, UNTAET, in consultation with UNHCR and the police, ensures that a returnee who has been identified as being at risk (of being the victim of threats or assault) has access to a safe house as a temporary solution, until his or her situation can be clarified. After their return, UNTAET regularly visits the returnees in their receiving community to verify their well-being. Instances of threats and assaults against returnees are reported to the police, who are encouraged to investigate.

5. The mentally ill

83. UNTAET has received increasing reports about persons suffering from acute psychiatric distress who, in the absence of institutional support, are being arbitrarily detained by their neighbours or relatives. Community members, CivPol or ETPS have reported to UNTAET incidents in Manatuto, Ermera, Bobonaro, Liquisa districts in which persons have been detained, usually in a small shelter or in the open air, strapped, their hands or feet cuffed or chained to a block of wood, which has, in some cases, led to physical injuries. Relatives feel they have no other option as these persons are considered to be a danger to themselves and/or the community. UNTAET, CivPol and ETPS have sought the assistance of Psychological Recovery and Treatment in East Timor (PRADET), the only NGO currently providing treatment to such patients through visiting international psychiatrists and East Timorese medical professionals. UNTAET has also monitored cases of mentally ill inmates in Becora and Gleno prisons.[14] The UNTAET Human Rights Unit hosts a mental health working group, comprised of representatives of the Ministries of Health and Justice, the Division of Social Services, the Vulnerable Person Unit within CivPol and PRADET, and Becora prison staff, and liaises with the relevant governmental departments. In September 2001, the Ministry of Health informed UNTAET that the Government intended to have a mental health programme in place sometime in 2002.

E. Enforcement of law

84. Extralegal security groups continue to operate in East Timor. Although the extent of this problem appears to have decreased over the past year, alleged human rights abuses committed by such groups continue to be reported. These groups include former CNRT security groups, other security groups linked to political parties and organizations, village security organizations and groups linked to former Falintil members. As of the time of writing, there is some ambiguity in the draft constitution about the status of such security groups. It is hoped that the Constitution will make it clear that military and police functions of the State can only be performed by properly authorized, trained and disciplined officials.

85. While the CNRT formally disbanded in June 2001, security groups linked to the organization have continued to function in many districts, at the district level. Such groups generally seem to perceive their role as one of assisting the police, both ETPS and CivPol, with law and order functions, and have continued to engage in intelligence gathering, investigative work and, to varying degrees, liaison with CivPol and ETPS. In addition, village and sub-village based security groups, which report to the village and sub-village chiefs, also continue to

perceive that they have a role in law and order, in particular acting as a filter for complaints to CivPol and ETPS, including complaints of violence against women and assaults against returnees, and as a mechanism for resolving some matters at a local level. The role that such groups play in determining which cases should be referred to CivPol and/or ETPS raises concerns about the rights of individuals to seek justice, in particular as it is not clear which sort of complaints are considered by these security groups to be criminal matters that should be referred to CivPol and/or ETPS.

86. A number of security groups are alleged to have assaulted and threatened individuals. Former members of Falintil continue to exercise significant control, commanding extralegal security groups and participating in village security organizations. For example, one former commander operating in Baucau has no lawful security role but continues to function in this capacity: individuals loyal to him are alleged to have, in his name, "summoned" people accused of involvement in criminal activity and made arbitrary arrests.

87. CivPol and ETPS have developed community policing programmes across East Timor which informally take into account the role of security groups. However, a nationwide mechanism for cooperation with security groups has not been developed and the groups continue to function without formal legal status or regulation.

IV. RECOMMENDATIONS FOR ONGOING AND FUTURE KEY AREAS OF WORK TO PROMOTE AND PROTECT HUMAN RIGHTS IN EAST TIMOR

88. The mandate of UNTAET as the transitional administration was extended until 20 May 2002 by the Security Council in its resolution 1392 (2002) of 31 January 2002. Following the withdrawal of UNTAET in May 2002, it is envisaged that a substantially reduced United Nations presence will remain in place to contribute to the maintenance of internal and external security, to assist in the development of law enforcement agencies in East Timor operating in accordance with international human rights standards, and to provide assistance crucial for the stability of East Timor and its emerging public administration. It is also envisaged that a continuing process of assessment and downsizing will take place throughout the life of the successor mission and that the United Nations will move towards a normal framework of development assistance for East Timor as quickly as possible. The United Nations High Commissioner for Human Rights welcomes the mainstreaming of human rights as an operational principle of the successor mission. Through this mainstreaming process, human rights advice, training and monitoring, with particular consideration to gender and vulnerable persons, will form an integral part of the mission programme. The High Commissioner encourages all relevant persons, including United Nations personnel of the successor mission and the East Timorese Government, to make every effort to transform this defined principle into an operational reality. The High Commissioner also welcomes the decision of the second Transitional Government to create the post of Adviser on Human Rights in the Office of the Chief Minister.

89. With regard to the centrality of human rights within United Nations activities, the High Commissioner recalls the position of the Secretary-General: that human rights promotion and protection is at the core of United Nations action for the prevention of armed conflict. This

is particularly relevant in East Timor, where further consolidation of peace is needed, where suspicion and lack of trust is deep-rooted, and approximately 60,000 East Timorese refugees - many of them associated, correctly or not, with the violence of 1999 – are still to return to East Timor from West Timor. Furthermore, taking into account both the requirement to safeguard and strengthen the human rights structures and capacities put in place by UNTAET, and the ongoing significant human rights needs of East Timor, the High Commissioner calls upon the East Timorese leadership, the East Timorese people and the relevant bodies of the United Nations to ensure that priority continues to be placed within the United Nations activities on assisting East Timor to establish a firm culture of respect for human rights, democracy and the rule of law.

90. In this regard, the High Commissioner recommends that a sturdy United Nations human rights field presence be maintained in the UNTAET successor mission, fully equipped to address the human rights situation in East Timor. The human rights field presence should continue to strengthen national capacity to promote and protect human rights. Additional human rights technical assistance activities could fall under a project of technical cooperation between OHCHR and the UNTAET successor mission, with the approval of the East Timorese Government.

91. The High Commissioner recalls the traditionally precarious and disempowered position of women in East Timor. As East Timor seeks to join the family of nations, every effort must be made to ensure that consideration of the interests of women are central to nation building. Adequate attention and resources are required to address the particular obstacles women face in exercising their rights. The implications for women of any legislation adopted or policy pursued must be assessed and addressed by the new East Timorese Government. Moreover, women must play a central role in the new government, in every department and at every level. In this regard, the High Commissioner welcomes the decision of the Second Transitional Government to create the position of Adviser on the Promotion of Equality in the Office of the Chief Minister.

Status of investigations and prosecutions of serious crimes committed in East Timor in 1999

92. The High Commissioner reaffirms her call for justice for the victims of grave violations of human rights and international humanitarian law and for the perpetrators of the serious crimes of 1999 to be speedily prosecuted under the law. Whilst the East Timorese people stand ready to begin the painful, yet necessary, reception, truth and reconciliation process, it is essential that serious crimes do not go unpunished. Impunity for such crimes and a return without any process to the legal fold for the perpetrators would undermine from the very beginning the capacity to build in a credible manner a culture embodying respect for the rule of law. Accordingly, the High Commissioner urges the East Timorese Government, UNTAET and the UNTAET successor mission to energetically continue prosecutions of the serious crimes that took place in East Timor in 1999, as a way of providing the East Timorese people with some measure of justice and redress. The international community is also encouraged to re-focus its attention on the prosecution of those serious crimes.

93. The High Commissioner notes the decision taken in the Los Palos trial. The High Commissioner is, however, concerned at the apparent lack of parity between the prosecution and the defence, resulting primarily from the lack and quality of human resources for the defence. The trial of this case profoundly demonstrates the requirement of sustainable funding for the judicial system and continued professional training of judicial and legal professionals in accordance with international standards. The High Commissioner, therefore, welcomes the decision of the East Timorese leadership and UNTAET to request that the tasks of the Serious Crimes Unit continue in the UNTAET successor mission. The High Commissioner hopes that this request will be favourably considered by the relevant bodies of the United Nations. It is of paramount importance that funding be made available to support serious crimes trials in East Timor. This includes continued support for the SCU, as well as increased support for the strengthening of the judiciary, the Public Defenders' Office, the Legal Aid Service and court support staff. It is hoped that sustainable funding and secure contracts will go a significant way towards ensuring that, inter alia, the Lolotoe case is not beset with problems similar to the Los Palos case and that the right to a fair trial is guaranteed. In addition, the High Commissioner welcomes the work of UNTAET in implementing the Regulation on the Establishment of the Legal Aid Service.

94. The High Commissioner notes again, with growing concern, the failure, as at the date of writing, of the Indonesian authorities to prosecute even one case arising from the 1999 violations. This situation persists more than two years after the Minister for Foreign Affairs of Indonesia informed the Secretary-General that the "national judicial mechanism of the Republic of Indonesia is functioning and capable of dispensing justice",[15] and more than 11 months after the issuance of the statement of the Chairperson of the Commission on Human Rights which urged "the Government of Indonesia to establish the proposed ad hoc human rights court without delay, and to bring to justice those responsible for violations of human rights and humanitarian law abuses in East Timor."[16] The High Commissioner also notes the failure on the part of the Indonesian authorities to implement the Memorandum of Understanding on legal cooperation they signed with UNTAET. Nearly two years on, the authorities have still not extended cooperation to UNTAET. The failure on the part of the Indonesian authorities to prosecute perpetrators of the 1999 violence is inconsistent with the recommendation of the International Commission of Inquiry on East Timor that:

> "Future action with regard to the violations of human rights in East Timor should be governed by the following human rights principles: the individual's right to have an effective remedy for violations of human rights, which includes the State's responsibility to investigate violations, prosecute criminally and punish those responsible; the individual's right to reparation and compensation for violations of human rights from the State responsible for the violations; the need to act against impunity in order to discourage future violations of basic human rights."[17]

95. With this situation in mind, the High Commissioner calls upon the international community to reconsider the recommendations of the International Commission of Inquiry on East Timor, including that concerning the establishment by the United Nations of an international human rights tribunal consisting of judges appointed by the United Nations to receive complaints and to try and sentence those accused of serious violations of fundamental human rights and international law that occurred in East Timor in 1999.[18]

Capacity building

96. The High Commissioner again expresses her appreciation of the ongoing efforts of both the Department of Justice and UNTAET to establish a legal and judicial system from scratch in East Timor. The High Commissioner remains extremely concerned, however, at the systemic lack of physical and, most importantly, human resources within the judicial system. While some mentoring and training has been provided by international staff, continued mentoring and training, in a language that magistrates, court staff and defenders can understand, is still required. Taking into account the long-term nature of building and developing a judicial legal system from scratch, the High Commissioner urgently calls upon the international community to provide additional support and funding for the justice system in its entirety in order to strengthen further the fundamental principles of equality before the law and the independence of the judiciary.

97. Taking into account the complexity of the legal framework in East Timor, the High Commissioner renews her recommendation that legislative reform and drafting, in accordance with international standards, continue to be a high priority. The High Commissioner renews her offer to the new East Timorese Government to continue to provide technical cooperation to assist in the drafting of new legislation, the review of existing legislation and the interpretation and implementation of those standards.

98. The High Commissioner renews her call to the East Timorese Government to ratify upon independence or as soon as possible thereafter the principal international human rights instruments: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. To ensure that ratification of those instruments, and of others subsequently, translates into the implementation in practice of the rights and duties contained therein, technical assistance should be provided to assist the new East Timorese Government to implement its international legal obligations and to comply with its reporting requirements. The High Commissioner, therefore, reiterates her offer to the East Timorese Government to provide technical cooperation to assist in developing a programme of ratification and implementation of these instruments to ensure fulfilment of East Timor's obligations contained therein.

99. The High Commissioner applauds the East Timorese people for their high turn-out on election day and their understanding of the importance of exercising their civil and political rights. The election was a major step forward in the fulfilment of the human rights of the East Timorese people, in particular, the right to self-determination. The generally peacefully and uninhibited environment in which the elections for the Constituent Assembly took place bode well for the East Timorese presidential election, which the Assembly has recommended should take place on 14 April 2002.

100. The High Commissioner appreciates the significant efforts of UNTAET to ensure the success of election day, in particular, the establishment of an increased number of polling centres, and its attempts to ensure the development of an election model that can be sustained in the future.

101. The High Commissioner notes, however, the lack of an overall coordinated mechanism for dealing with electoral complaints on election day and therefore recommends the early establishment of an appropriate nation-wide and district level integrated system for monitoring, receiving and coordinating information relating to election-related offences to ensure that complaints are properly handled. International technical assistance to support the establishment of such a mechanism would be welcomed.

102. The High Commissioner recommends that the technical and logistical problems identified during the Constituent Assembly election be addressed in time to ensure that all East Timorese are able to exercise their right to vote in the presidential election.

103. The High Commissioner draws attention to the potential for security groups to play a role in the lead-up to and during the presidential election and calls upon all interested parties and urges all political parties to uphold the role of CivPol and ETPS as the sole body conducting law enforcement.

104. With regard to the drafting of a constitution, the High Commissioner wrote to the President of the Constituent Assembly in December 2001 welcoming the primacy given to the protection of human rights in the draft text. The High Commissioner also noted that if the Constitution is to be "owned" and respected by the East Timorese people, it is important that further steps be taken to make the drafting process more inclusive. The High Commissioner recommended that there should be widespread consultation before the Constitution is finalized and a full and appropriate programme of community education thereafter. In particular, the High Commissioner recommends that further and wider discussion should be undertaken on how to promote and protect human rights in East Timor.

105. The High Commissioner also recommends that East Timor not miss the opportunity to entrench constitutionally an independent, strong and effective national institution, established in accordance with United Nations standards, to promote and protect human rights.

106. The High Commissioner applauds the work of UNTAET in supporting the development of civil society actors, specifically human rights NGOs. With the significant decrease in size and strength of the United Nations presence in East Timor and the associated steep decline in the monitoring and assessment of trends and patterns of abuse, it is essential that indigenous human rights networks continue to be supported, both to monitor and document abuses, and to provide technical assistance to develop national capacity to promote and protect human rights. Accordingly, the High Commissioner recommends that ongoing support and training continue to be provided to East Timorese human rights professionals, in particular to those working with ethnic and religious minorities and other vulnerable groups. The High Commissioner also encourages the East Timorese Government to continue its close relationship with civil society, so effectively maintained whilst under occupation and outside of power, and to continue the path towards the establishment of an open, vibrant, democratic East Timorese society.

The reception, truth and reconciliation process

107. The High Commissioner notes the high level of interest and support being expressed by the East Timorese people for the work of the Commission. She also notes that, although initial voluntary contributions from a number of donors to support the establishment and running of the Commission have been encouraging, the commitments received remain significantly short of the total budget required if the Commission is to be able to implement its mandate fully. Accordingly, the High Commissioner offers her ongoing support to this process and calls upon the international community to support promptly and effectively the reception, truth and reconciliation process.

D. The protection of ethnic and religious minorities and other vulnerable groups

108. The High Commissioner notes that in a nation which has faced so much persecution on the basis of differing political opinions, it is essential that tolerance and respect be guaranteed for the ethnic and religious minorities. The High Commissioner renews her recommendation that the East Timorese Government establish a protection mechanism to ensure that East Timorese minorities and other vulnerable groups are able to live peacefully with their neighbours.

109. The High Commissioner notes that efforts have been made by UNTAET to advance the general equality of women and calls for further practical steps to be taken by the East Timorese Government in this respect.

110. The High Commissioner is disturbed to learn of increased reports of violence against women and children, (although it is impossible to assess whether this is due to an increase in domestic violence or simply increased reporting). The High Commissioner encourages the authorities, both East Timorese and United Nations, to address this issue on a priority basis. She recommends that a sustained and comprehensive approach be adopted to tackle this nationwide problem, including the participation of government, the law enforcement agencies, civil society, the communities and their leaders. The High Commissioner also calls for the early review of the existing legislation on domestic violence and the early adoption of legislation that, inter alia, treats such behaviour as a crime, provides protection to victims and appropriate sentencing powers. The High Commissioner also calls for a review of both the criminal and civil law to ensure that they adequately address domestic violence, the development of specific legislation on domestic violence to ensure it is addressed effectively as a crime, and the establishment of a functioning civil jurisdiction, including, possibly, the establishment of family courts as a priority, to ensure the fulfilment of women and children's human rights in East Timor.

111. The High Commissioner welcomes the commitment of UNTAET to developing a public education campaign to bring the difficult issue of child abuse to the fore and to establish greater awareness of child abuse as a crime.

112. It is essential that returnee monitoring and protection continue, in order to ensure the return of those East Timorese refugees in West Timor who wish to return. It is also fundamental that complaints of assaults against returnees are fully investigated and prosecuted in order that those still in West Timor can return with the knowledge that they will be protected by the law.

113. The High Commissioner notes with serious concern the reports of missing and separated East Timorese children in West Timor and other parts of Indonesia. The High Commissioner calls upon the Government of Indonesia to cooperate with the East Timorese Government and the international community in order to assess the situation of these children and to ensure speedy family reunification. There should be an immediate halt to further separation of East Timorese children from their families in West Timor or other parts of Indonesia.

114. The High Commissioner welcomes the proposal of the East Timorese Government to establish a comprehensive programme on mental health. However, the High Commissioner notes that there is still no psychiatrist permanently working in East Timor and it is feared that in the absence of institutional care persons suffering serious forms of mental illness will continue to be either restrained in deplorable conditions by their communities or referred to the prison. Accordingly, the High Commissioner calls upon the international community to support East Timorese efforts to treat and conduct research into the causes of mental ill health in East Timor.

115. The High Commissioner urges all parties, in particular the East Timorese Government and political parties, to uphold the role of CivPol and ETPS as the sole body to conduct law enforcement.

Notes

[1] Report of the International Commission of Inquiry on East Timor (A/54/726-S/2000/59).

[2] The treaty monitoring body also urged the Government of Indonesia to "fully cooperate with UNTAET, in particular by providing mutual assistance in investigations or court proceedings in accordance with the Memorandum of Understanding signed in April 2000, including affording the members of its Serious Crimes Unit full access to relevant files, authorizing mutual visits to Indonesia and East Timor, and transferring suspects for trials in East Timor".

[3] New indictments issued since the preparation of the interim report of the High Commissioner to the General Assembly include one issued in August 2001 for crimes against humanity allegedly committed by *Tim Sasurat Ablai* militia in Manufahi district between April and October 1999; one issued in September 2001 for crimes against humanity allegedly committed by *Sakunar* militia in Oecussi district between April and September 1999; and the indictment issued in November 2001 for crimes against humanity allegedly committed by the *Besi Merah Putih* militia in Liquica district between April and September 1999 (including the Liquica church massacre) - all with the support of the Indonesian military and civilian authorities.

[4] UNTAET/REG/2000/11, as amended by 2000/14, 2001/18 and 2001/25.

[5] By way of example, of the approximately 280 criminal cases that CivPol/ETPS have investigated in Oecussi and referred to the Public Prosecutor, five were referred to the Dili District Court, of which two proceedings have been finalized. These two serious criminal matters (murder and attempted murder) were heard by a panel of judges from Dili who, at the conclusion of the case, delivered their judgements in Oecussi District Court. All other general criminal matters arising in Oecussi over the past two years have not been to court, either in Oecussi or Dili, and are either waiting in a backlog (approximately 87 to 100 cases) or, more commonly, parties have had no option but to resolve criminal cases using traditional customary procedures or "adat".

[6] Baucau District Court currently has seven judges (it used to have nine judges, but one resigned and another was transferred to Dili Court). Baucau has three prosecutors and one public defender permanently.

[7] In June 2000, one international judge was appointed. In July or August 2000, one East Timorese investigating judge was appointed. In approximately August 2000, one East Timorese public prosecutor was appointed. In August 2001, one East Timorese public defender was appointed. At the end of September 2001, the international judge left. In October 2001, the investigating judge was reassigned as a trial judge and no investigating judge was appointed in his place. In October 2001, a court clerk was appointed. The human resources still required are one investigating judge, one prosecutor's clerk, at least one language assistant, two of the three necessary trial judges and mentor/s for the prosecutor, public defender and judge. The physical resources required are a functional building and stationery.

[8] According to legislation, maximum pre-trial detention is six months. However a detention warrant may be extended by another three months when required by the interests of justice and where the alleged crime carries a penalty of more than five years imprisonment (UNTAET/REG/2000/30, art. 20.11). Defendants may be held in indefinite pre-trial detention only on exceptional grounds and when the alleged crime carries a penalty of more than 10 years' imprisonment (UNTAET/REG/2000/30, art. 20.12).

[9] Section 26 (4).

[10] Paragraph 160 of the report of the Board of Independent Electoral Commissioners.

[11] UNTAET/REG/2001/10.

[12] In addition to emphasizing the accused's skills as a surgeon, the panel responsible for ruling on appeal on the issue of conditioning release, also referred in its 25 July 2001 decision to the fact that "the investigating judge did not take into account the traditional values and norms in East Timor that do not allow a wife to do as she pleases without consultation with her husband". This appears to violate the principle of equal treatment between men and women enshrined in the laws applicable in East Timor and international human rights standards.

[13] UNTAET/REG/2000/30.

[14] PRADET has treated at least 39 inmates over the past year in those prisons; some of them required counselling and psychosocial support, others required medical treatment for acute psychiatric distress.

[15] Letter dated 26 January 2000 from the Minister for Foreign Affairs of Indonesia to the Secretary-General (A/54/727-S/2000/65, annex).

[16] See E/2001/23-E/CN.4/2001/167, para. 239.

[17] A/54/726-S/2000/59, para 148.

[18] Ibid., para. 153

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